

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Binder Trucking, Inc.

**ADMINISTRATIVE
CONSENT ORDER
NO. 2008-WW-11**

**TO: Zac Binder
4971 Highway 71
Rembrandt, IA
50576**

I. SUMMARY

This administrative consent order (order) is entered into between Binder Trucking, Inc. (Binder Trucking) and the Iowa Department of Natural Resources (Department). Binder Trucking hereby agrees to cease all illegal discharges to waters of the State, pay a penalty of \$8,000.00 and pay fish kill restitution of \$623.54.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Nate Young, Field Office #3
Iowa Department of Natural Resources
1900 N Grand
Spencer, Iowa 50401
Phone: 712/262-4177

Relating to legal requirements:

Carrie Schoenbaum, Attorney
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50309
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and Binder Trucking hereby agree to the following statement of facts:

1. Binder Trucking owns and operates a livestock trailer washout facility located at S 12, T92, R37, in Buena Vista County, Iowa. This facility is situated near a tributary to the North Raccoon River known as drainage district # 34, lateral # 6 (tributary 34, 6). The facility consists of a 120 ft by 100 ft three bay washout building with a two cell aerated earthen lagoon used for treatment. The wastewater flows across the sloped floor to a grit pit where the large solids are separated and augered to an outside storage area. The remaining liquid waste is pumped to the two cell earthen lagoon. The aeration in the lagoon further treats the wastewater and reduces odors. The facility washes approximately ten trucks per day at 2000 gallons per wash. The facility is designed to recirculate up to 75% of the wastewater from cell number two. Provided that this rate of circulation occurs the facility generates 1,825,000 gallons of wastewater. The wastewater is applied to nearby fields by the use of perforated piping and sprinkler systems twice a year.
2. On February 5, 2007, Binder Trucking applied for an Iowa Operation permit.
3. On August 11, 2007, Mr. Binder land applied wastewater without an Iowa Operation permit.
4. On August 13, 2007, Field Office 3 received a complaint alleging that tributary 34, 6 to the North Raccoon River was red in color and fish were dead. Julie Sievers, an Environmental Specialist Senior of the Department, conducted a preliminary complaint investigation. At approximately 7:00 a.m., Ms. Sievers observed dead fish in small numbers at two bridges. Thus, Bryon Whiting and Nate Young, Environmental Specialists with the Department, were called to investigate.
5. Mr. Young and Mr. Whiting arrived at tributary 34, 6 at approximately 9:00 a.m. Upon arrival at the location of site #1 stream samples were taken. Field tests at this location showed an abundance of dissolved oxygen and no ammonia. The water appeared clear and live fish were observed.

Mr. Young and Mr. Whiting proceeded to the location of site #2. This site is adjacent to the field where Mr. Binder applied the wastewater. Field tests indicated a lower level of dissolved oxygen and a slightly elevated level of ammonia. Live fish were observed at this location.

Mr. Young and Mr. Whiting proceeded downstream to the location of site #3. Field tests indicated adequate dissolved oxygen and ammonia level of 1.9 mg/L. Live fish were observed and a scum on the water surface was noticed.

Mr. Young and Mr. Whiting proceeded to the location of site #4. Field tests indicated a high level of dissolved oxygen and a slightly higher level of ammonia. Live and dead fish were observed at this location.

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Mr. Young and Mr. Whiting proceeded to the location of site #5. Field tests at this location indicated an abundance of dissolved oxygen and high level of ammonia. No fish were observed. Laboratory samples were taken from this location.

Mr. Young and Mr. Whiting proceeded to the location of site #6 which is the confluence between tributary 34, 6 and the North Raccoon River. Field samples at this location indicated a lower level of dissolved oxygen and a high level of ammonia. No fish were observed at this location. The water had a red rusty color and a sewage odor was detected. Laboratory samples were taken at this location.

Mr. Young and Mr. Whiting proceeded downstream to the location of site #7. Field tests at this site indicated an abundance of dissolved oxygen and a very low level of ammonia. Laboratory samples were taken from this location.

Last, Mr. Young and Mr. Whiting went to the site of Binder Trucking. Mr. Binder was not present at this time. Upon locating the lagoons behind the facility Mr. Young and Mr. Whiting immediately noticed that each basin had recently been pumped down approximately one half feet. The color of the wastewater in the north lagoon (site #8) was pink or a light rust color, much like that observed at site #6. Field tests indicated that the contents of the lagoon had a dissolved oxygen content of 0 mg/l and an ammonia level of 100 mg/l. Laboratory samples were taken from the north lagoon. At this time, Mr. Binder's cell phone was called. Upon Mr. Binder's arrival at the truck wash he stated that on August 11, 2007, he pumped down the lagoons and land applied the wastewater. He land applied the wastewater by laying PVC pipes with holes drilled in them on the ground. The wastewater was applied to the field adjacent to the location of site #2. This is where ammonia levels first appeared in the Department's sampling. Mr. Binder stated that there were no tile intakes in the field. The corn was too tall to verify this statement; however, according to maps provided by Buena Vista County Environmental Health Department the field is heavily patterned with tile.

6. On August 14, 2007, Mr. Young and Brandon Minor, an Environmental Specialists of the Department, returned to the field and located a tile outlet (site #9). Field samples revealed a dissolved oxygen level of 7 mg/l and a high level of ammonia (15 mg/l). Laboratory samples were also taken.

7. The following table summarizes the results of field samples taken during the investigation on August 13-14, 2007:

Location (Site #)	Ammonia (mg/L)	Dissolved Oxygen (mg/L)	Temperature (°C)	pH
Site #1	0	6.5	22	7.9
Site #2	1.6	4.5	24	7.8
Site #3	1.9	7.2	24	7.9
Site #4	2.8	9.0	29	9.1
Site #5	15	9.0	30	8.9
Site #6	15	7.0	28	8.0
Site #7	0.1	9.0	28	8.9

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Site #8	100	0	28	8.0
Site #9	15	7.0	26.5	7.2

8. Laboratory samples were also taken during the August 13-14, 2007 investigation. Fecal coliform, total suspended solids (TSS), biochemical oxygen demand (BOD), and ammonia nitrogen (NH₃-N) testing was performed by University Hygienic Laboratory in Ankeny. The following table summarizes the results of this sampling:

Location (Site #)	NH ₃ -N (mg/L)	Fecal Coliform (Col/100mL)	BOD (mg/L)	TSS (mg/L)
Site #1	0.1	80	<2	7
Site #2	No Data	No Data	No Data	No Data
Site #3	No Data	No Data	No Data	No Data
Site #4	No Data	No Data	No Data	No Data
Site #5	7.0	370	30	69
Site #6	7.9	720	28	62
Site #7	0.1	72	4	27
Site #8	130	Not Analyzed	Not Analyzed	Not Analyzed
Site #9	8.6	250	60	1300

9. On August 13, 2007, Lannie Miller, a Natural Resource Biologist 2 of the Department, Don Herrig a Natural Resource Technician 2 of the Department, Matt Mork and Todd Perry, Seasonal Aids of the Department, investigated the fish kill caused by Binder Trucking's land application of wastewater. This investigation concluded that 731 fish were killed, valued at \$175.45 (plus investigation costs of \$448.09).

10. On October 1, 2007, an Iowa Operation permit was issued to Binder Trucking. This permit authorized land application of wastewater from this facility using mobile application vehicles.

IV. CONCLUSIONS OF LAW

The Department and Binder Trucking hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. At the time of the discharge no such permit had been issued for this truck wash, therefore the foregoing facts establish that this provision has been violated.

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2. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

3. Iowa Code subsection 481A.151(1) provides a person who is liable for polluting a water of the State in violation of state law is also liable to pay restitution to the Department for injury to a wild animal by the pollution. The amount of the restitution shall also include the Department's administrative costs for investigating the incident.

V. ORDER

THEREFORE, the Department orders Binder Trucking hereby agrees to comply with the following in order to cease, abate, and redress the above-cited violations:

1. Cease all illegal discharges to waters of the State;
2. Within 30 days after signing this order, pay fish kill restitution of \$623.54 to the Department; and
3. Within 30 days after signing this order, pay to the Department a penalty of \$8,000.00.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties for current violations.

2. **Economic Benefit:** On February 5, 2007, Binder Trucking applied for an Iowa Operation permit. This permit was not issued until October 1, 2007. Nevertheless, Binder Trucking did not wait for the permit to be issued to begin land applying wastewater. On average Binder Trucking washes ten trailers per week and charges approximately \$100.00 per wash. Thus the economic benefit is substantial. Therefore, \$2,000.00 is assessed for this factor.

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3. **Gravity of the Violation:** One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. The ongoing use of an unpermitted facility and the unauthorized discharge pose a threat to the environment. Therefore, \$2,000.00 is assessed for this factor.

4. **Culpability:** Binder Trucking was aware of the requirement to obtain an Iowa Operation Permit prior to land application of wastewater. In fact, as discussed above, Binder Trucking applied for such a permit, but began land application of wastewater before receiving a permit from the Department. Thus, Binder Trucking knowingly violated Iowa's environmental rules and statutes. Therefore, \$4,000.00 is assessed for this factor.


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VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference by 567 IAC Chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of Binder Trucking. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



Binder Trucking, Inc.
Zac Binder (President)

Dated this 2 day of
April, 2008.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 4 day of
April, 2008.

Field Office 3, Carrie Schoenebaum; Nate Young, I.B.2.a.